

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

LENARD RAY BEECHAM

and

KIRBY LEE JONES,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of
Appeals for the Fourth Circuit

PETITIONERS' REPLY MEMORANDUM

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

No. 93-445

LENARD RAY BEECHAM

and

KIRBY LEE JONES,

Petitioners,

v.

UNITED STATES OF AMERICA,

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On Petition for a Writ of Certiorari
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for the Fourth Circuit

PETITIONERS' REPLY MEMORANDUM

The Solicitor General acknowledges that the Fourth Circuit's decisions in these cases conflict squarely with decisions on the same legal issue by the Eighth and Ninth Circuits. The Solicitor General also agrees "that the courts of appeals are divided, and that the issue is one that will ultimately merit review by this Court." Memorandum for the United States in Opposition, p. 3. The only ground suggested by the Solicitor General for denying certiorari is that, prior to

the sentencing of the defendants, the cases "are in an interlocutory posture." *Id.*

The assertedly "interlocutory" character of the decisions is, however, an inadequate reason for denying this petition.

First, there is no theoretical possibility — as there ordinarily is in the case of other interlocutory rulings — that the final outcome of the litigation will moot any request for review. As a consequence of the Fourth Circuit's ruling, petitioner Jones entered into a plea agreement in which he reserved the right to seek review in this Court of the Fourth Circuit's ruling. Although the parties requested entry of the agreement and sentencing, the district court refused, on July 22, 1993, to act on the plea agreement until after this petition is decided. See Exhibit I, pp. 1a-2a, *infra*.

To force petitioner Jones to demand a sentence pursuant to the plea agreement and then to go through the formality of an appeal on an issue which that court has already definitely resolved would exalt form over substance. The issue in Jones' case is now ripe and ready for plenary review.

Petitioner Beecham is scheduled to be sentenced on October 26, 1993, on the six counts on which the district court had entered a judgment of acquittal after an adverse jury verdict. Regardless of the severity of the sentence, petitioner Beecham will seek to set these convictions aside because maintenance of these convictions on his record will prejudice him in future business activities. In his case, as well, no purpose is served by forcing him to file pleadings in the district court and to take the time of the court of appeals for an "appeal" — which is merely a formality — of an issue that has already been decided.

Second, the legal issue presented in the petition — on which the Circuits are currently in conflict — should be decided sooner rather than later. It directly affects primary conduct. May a certain class of persons — *i.e.*, those who have federal convictions that have been affected by local restoration of rights — possess firearms? As we noted in our petition, persons who are in this category residing in the five States in the Fourth Circuit may not possess firearms. Similarly situated residents of the 16 States in the Eighth and Ninth Circuits are entitled, under federal law, to own or possess firearms. And residents of the remaining 29 States and of the District of Columbia who are in the defined category are wholly uncertain. Is their possession of firearms criminally prohibited — as the Fourth Circuit has declared — or is it entirely lawful — as the Eighth and Ninth Circuits have ruled? Any delay in the resolution of this legal issue significantly increases the likelihood that individuals who seek to abide by the law will be unwittingly ensnared. We are surprised, therefore, that the Solicitor General seeks to extend the duration of the period of uncertainty for no apparent benefit. We urge this Court to reject the suggestion that a legal issue that it will ultimately have to resolve should be indefinitely delayed at the expense of those who need to know *today* what the law demands of them.

This Court's reluctance to review federal criminal convictions under 28 U.S.C. § 1254(1) before there is a final judgment of conviction and sentence is entirely a prudential rule. Stern, Gressman & Shapiro, *Supreme Court Practice* § 4.18, p. 224 (6th ed. 1986). It does not relate to the jurisdiction of the Court. In a case such as this one, where a prompt decision on the merits is needed so that law-abiding citizens may know the standard to which they must conform and where the immediate case or controversy will not disappear if action is delayed until a later juncture of the

proceedings, there is no reason to defer consideration of the dispositive legal issue.

For the foregoing reasons, together with the reasons stated in our petition, certiorari should be granted.

Respectfully submitted,

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October 1993

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF WEST VIRGINIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 92-46

KIRBY LEE JONES,

Defendant.

FILED
JUL 22 1993
U.S. District
Court
Elkins, WV 26241

ORDER

The Court has received a copy of a plea agreement in the above-styled criminal action wherein it is indicated that the defendant will enter a plea of guilty to Count One of the Indictment. Inasmuch as Paragraph Nine of the plea agreement reflects that the defendant will file a Petition for a Writ of Certiorari to the United States Supreme Court, it is

ORDERED that further action in this matter and consideration of the plea agreement shall be held in abeyance until the defendant's appeal is exhausted. It is further

ORDERED that the period of delay resulting from the appeal and from the Court's consideration of the issues raised and suggested by the said plea agreement shall be excluded in

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computing the time within which the trial of the offense charged in the above-styled criminal action must commence in accordance with the provisions of 18 U.S.C. § 3161(h)(1)(E) an (I).

Enter: July 22nd, 1993.

/ s / Robert R. Maxwell
United States District Judge

/ s / Deputy Clerk